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TRANSMITTAL FORM

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Total Number of Pages in This Submission

4

Application Number

10/756,971

Filing Date

January 13, 2004

First Named Inventor

Bianchi, et al.

Art Unit

3738

Examiner Name

Suzette J-J Gherbi

Attorney Docket Number

MSDI-546/PC316.10

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard; Response to Notice of Non-Compliant Amendment Under 37 CFR 1.121
<input type="checkbox"/> Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Krieg DeVault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	August 15, 2006	Reg. No.	45,431

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name	Brad A. Schepers	Date	August 15, 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


In re patent application of:)	Before the Examiner
Bianchi et al.)	Suzette J-J Gherbi
)	
Application Serial No. 10/756,971)	Group Art Unit 3738
)	
Filed January 13, 2004)	Ref. No. MSDI-546
)	
OPEN INTERVERTEBRAL SPACER)	August 15, 2006

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT UNDER 37 CFR 1.121

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Non-Compliant Amendment dated July 28, 2006 (one month to respond), please enter and consider the following. No extension fees are believed to be due with regard to the filing of this Response. However, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:	
August 15, 2006	_____
Date of Deposit	
Brad A. Schepers	_____
Name of Registered Representative	
	_____
Signature	
August 15, 2006	_____
Date of Signature	

INTRODUCTORY COMMENTS

A Notice of Non-Compliant Amendment was mailed to the Applicant on July 28, 2006, indicating that the previously filed Response to Non-final Office Action included amended drawings that are not properly identified in the top margin as "Replacement Sheet", "New Sheet" or "Annotated Sheet" as required by 37 CFR 1.121(d), and that the drawings submitted are U.S. patent drawings.

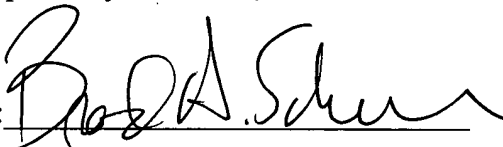
However, the Applicant notes that the figures filed with the Response to Non-final Office Action were not submitted as amendments to the drawing figures of the subject application, and are therefore not subject to the requirements of 37 CFR 1.121(d). Instead, the figures were clearly labeled as "Exhibit A", and were submitted to clarify and support the Applicant's position with regard to the patentability of several of the pending claims. (See pages 12 and 13 of the Response to Non-final Office Action). Since "Exhibit A" was submitted as an addendum to the Response to Non-final Office Action, and not as proposed amendments to the drawings figures, the Notice of Non-Compliant Amendment is believed to be improper. Accordingly, withdrawal of the Notice of Non-Compliant Amendment is respectfully requested along with entry and consideration of the Response to Non-final Office Action.

CONCLUSION

In response to the Notice of Non-Compliant Amendment mailed to the Applicant on July 28, 2006, as indicated above, since "Exhibit A" was submitted as an addendum to the Response to Non-final Office Action, and not as proposed amendments to the drawings figures, the Notice of Non-Compliant Amendment is believed to be improper and withdrawal of the same is respectfully requested. The Applicant thereby requests entry of the previous Response to Non-final Office Action filed with the U.S. Patent and Trademark Office on July 14, 2006.

Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: 

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